

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FAYE D. PEREZ,

Plaintiff,

v.

WORLD FINANCIAL GROUP,

Defendant.

Case No. 2:21-cv-00287-RFB-EJY

**ORDER AWARDING FEES AND COSTS
AND TO SHOW CAUSE**

Pending before the Court is Defendant's Expedited Motion for Status Conference and Expedited Motion to Modify Scheduling Order. ECF No. 68. No response to this Motion was timely filed. Also pending before the Court is World Financial Group's Rule 37 and Rule 41 Motion for Sanctions Based on Plaintiff Faye Perez's Failure to Appear for Deposition in Violation of the Court's Order (ECF No. 65) and Failure to Prosecute. ECF No. 69. No response to this Motion was timely filed. Finally, an Expedited Motion for Extension of Discovery Deadlines (ECF No. 71) was filed by Defendant on October 19, 2022. ECF No. 71.

I. Discussion.

Under United States District Court Local Rule LR 7-2(d) the Court may treat a failure by the non-moving party to respond or oppose a motion as consent to grant the motion. Here, Plaintiff failed to respond to the two motions filed by Defendant (titled above) at ECF Nos. 68 and 69. Moreover, as the docket reflects, Plaintiff has repeatedly failed to participate in this case generally, as well as in discovery specifically. The Court notes that Defendant's Motion brought under Rules 37 and 41 of the Federal Rules of Civil Procedure demonstrates Plaintiff has not been candid with Defendant about her residency in Arizona or her availability for deposition. ECF No. 69 at 1-2. And, the reason for Plaintiff's failure to appear at a Court ordered deposition was, at best, a misrepresentation of facts and, at worst, intentionally misleading. ECF Nos. 68 at 2; 69 at 2-3, 3 n.3. A third deposition time and date was set for Plaintiff following her failure to appear at the time and date ordered by the Court, but Plaintiff again failed to appear. ECF No. 71.

Rule 37 permits the award of fees, costs, and sanctions against a party who fails to appear for deposition. Fed. R. Civ. P. 37(b)(1) (“If the court where the discovery is taken orders a deponent to be sworn ... and the deponent fails to obey, the failure may be treated as contempt of court.”); *see also* Fed. R. Civ. P. 37(b)(2)(A)(i)-(vi) and 37(d)(3). Federal Rule of Civil Procedure 41(b) provides that “[i]f a plaintiff fails to prosecute or comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” The Court awards fees and costs to Defendant under Fed. R. Civ. P. 37. While the Court is not, at this time, prepared to recommend Rule 41(b) sanctions, Plaintiff is ordered to show cause why such sanctions should not be recommended.

II. Order

Accordingly, and based on the foregoing, IT IS HEREBY ORDERED that Defendant’s Expedited Motion for Status Conference and Expedited Motion to Modify Scheduling Order (ECF No. 68) is GRANTED.

IT IS FURTHER ORDERED that World Financial Group’s Rule 37 and Rule 41 Motion for Sanctions Based on Plaintiff Faye Perez’s Failure to Appear for Deposition in Violation of the Court’s Order (ECF No. 65) and Failure to Prosecute (ECF No. 69) is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that the deadlines to serve written discovery and for Defendant’s responses to Plaintiff’s first set of discovery requests are extended to **November 21, 2022**. The discovery deadline is extended to **December 21, 2022**. The deadline to file dispositive motions is extended to **January 23, 2023**.

IT IS FURTHER ORDERED that Defendant’s Motion for Extension of Discovery Deadlines (ECF No. 71) is DENIED as moot.

IT IS FURTHER ORDERED that Plaintiff shall pay all reasonable fees and costs associated with her failure to appear at her Court ordered **September 30, 2022** deposition as well as any fees and costs associated with her failure to appear for deposition on **October 19, 2022**.

IT IS FURTHER ORDERED that Plaintiff shall also pay all reasonable fees and costs associated with the preparation and filing of Defendant’s Expedited Motion for Status Conference and Expedited Motion to Modify Scheduling Order (ECF No. 68) and Rule 37 and Rule 41 Motion

1 for Sanctions Based on Plaintiff Faye Perez's Failure to Appear for Deposition in Violation of the
2 Court's Order (ECF No. 65) and Failure to Prosecute. ECF No. 69.

3 IT IS FURTHER ORDERED that no later than **October 31, 2022**, Defendant shall submit a
4 memorandum detailing fees and costs incurred associated with (i) Plaintiff's failure to appear for
5 deposition on September 30 and October 19, 2022, (ii) the Expedited Motion to Modify Scheduling
6 Order (ECF No. 68), and (iii) the Rule 37 and Rule 41 Motion for Sanctions (ECF No. 69). The
7 memorandum must include the names of all lawyers for whom fees are sought, their billing rates,
8 and the basis for the hourly rates charged. Time must be recorded in tenths of hours. Plaintiff shall
9 have through and including **November 10, 2022** to file a response to Defendant's Memorandum.

10 IT IS FURTHER ORDERED that no later than **October 24, 2022**, Defendant shall serve a
11 copy of this Order on Plaintiff through her email address recorded on the record and file a notice of
12 compliance that Defendant has done so.

13 **III. Order to Show Cause**

14 IT IS HEREBY ORDERED that Plaintiff must show cause, in writing, no later than
15 **November 18, 2022** why the Court should not recommend the severe sanction of dismissal of
16 Plaintiff's claims under Federal Rule of Civil Procedure 41(b). **Plaintiff is advised that failure to**
17 **timely respond to this Order to Show Cause will result in a recommendation that this case be**
18 **dismissed with prejudice.**

19 Dated this 21st day of October, 2022.

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22 ELAYNA J. YOUCHAK
23 UNITED STATES MAGISTRATE JUDGE
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